

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MELISSA L.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C22-5291-MLP

ORDER

I. INTRODUCTION

Plaintiff seeks review of the denial of her applications for Supplemental Security Income and Disability Insurance Benefits. Plaintiff contends the administrative law judge (“ALJ”) erred in assessing certain medical opinions, discounting her testimony, and assessing her residual functional capacity (“RFC”). (Dkt. # 10 at 1.) As discussed below, the Court REVERSES the Commissioner’s final decision and REMANDS the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

II. BACKGROUND

Plaintiff was born in 1968, has an associate’s degree in medical administration, education, and has worked most recently as a school custodian. AR at 350-51. Plaintiff was last gainfully employed in 2015, when she got injured on the job. *Id.* at 351.

1 In November 2016, Plaintiff applied for benefits, alleging disability as of June 17, 2015.
2 AR at 732-41, 754-60. Plaintiff's applications were denied initially and on reconsideration, and
3 Plaintiff requested a hearing. *Id.* at 507-09, 511-19. After the ALJ conducted hearings in July and
4 December 2018 (*id.* at 285-335), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at
5 479-91.

6 The Appeals Council granted Plaintiff's request for review and remanded the case for
7 further administrative proceedings. AR at 503-05. On remand, a different ALJ held hearings in
8 December 2020 and March 2021 (*id.* at 336-437), and subsequently issued a decision finding
9 Plaintiff not disabled. *Id.* at 41-62. The Appeals Council denied Plaintiff's request for review (*id.*
10 at 1-7), and Plaintiff appealed the final decision of the Commissioner to this Court. (Dkt. # 4.)

11 III. LEGAL STANDARDS

12 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
13 security benefits when the ALJ's findings are based on legal error or not supported by substantial
14 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a
15 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the
16 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
17 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error
18 alters the outcome of the case." *Id.*

19 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
20 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
21 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
22 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
23 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d

1 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
 2 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*
 3 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
 4 rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

5 IV. DISCUSSION

6 A. The ALJ Erred in Discounting Plaintiff’s Testimony

7 The ALJ summarized Plaintiff’s allegations and explained that she discounted them
 8 because: (1) the objective evidence fails to corroborate Plaintiff’s allegation of disabling
 9 limitations, (2) Plaintiff’s symptoms improved with conservative treatment, (3) Plaintiff refused
 10 to take mental health medications although they had been effective previously, and (4) Plaintiff
 11 retains the ability to engage in “robust” activities. AR at 51-54.

12 Plaintiff argues that the ALJ’s reasoning is not clear and convincing, as required in the
 13 Ninth Circuit. *See Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014). The Court will
 14 address each of Plaintiff’s arguments in turn.

15 1. Lack of Objective Corroboration

16 Plaintiff first argues that the ALJ erred in relying on the lack of objective corroboration
 17 because the ALJ failed to identify which allegations were not corroborated by which evidence.
 18 (Dkt. # 10 at 15-16.) Indeed, the ALJ simply summarized various objective findings without
 19 explaining if or how these findings related to or undermined Plaintiff’s allegations of pain. *See*
 20 AR at 52-53. The Appeals Council indicated concern that the prior ALJ decision relied “mostly”
 21 on normal or near normal objective findings to discount Plaintiff’s allegations of pain, without
 22 explaining how these findings relate to Plaintiff’s pain. *Id.* at 503. But the current ALJ decision
 23 again cites primarily objective findings as a “reason” to discount Plaintiff’s physical allegations,

1 without explaining how those findings relate to Plaintiff's allegations, and thus did not cure the
2 error identified by the Appeals Council. The Court therefore finds this line of the ALJ's
3 reasoning erroneous.

4 2. *Eligibility for Vocational Rehabilitation Services*

5 Next, Plaintiff notes that the ALJ cited her eligibility for vocational rehabilitation
6 services (AR at 53) and argues that this eligibility supports, rather than undermines, her
7 allegation of disability because her eligibility forms indicate that she has a "[s]erious limitation
8 in ability to stand, walk or maintain balance[.]" (Dkt. # 10 at 16 (citing AR at 1051, 1510).) The
9 forms also indicate that Plaintiff was found to have mental limitations and the need for work
10 accommodations. AR at 1512-13. Because the vocational rehabilitation forms describe
11 limitations consistent with Plaintiff's allegations, Plaintiff argues that the ALJ erred in relying on
12 Plaintiff's eligibility for vocational rehabilitation as a reason to discount her allegations. (Dkt.
13 # 10 at 16.)

14 The Court agrees with Plaintiff's argument because, when the vocational rehabilitation
15 forms are read in their entirety, they corroborate rather than contradict Plaintiff's allegations.
16 Although the Commissioner notes that findings of other agencies are not binding on the Social
17 Security Administration (dkt. # 11 at 6), this point is irrelevant to the ALJ's reliance on this
18 evidence in evaluating Plaintiff's allegations and fails to grapple with Plaintiff's arguments,
19 which are grounded in the record. The Court therefore also finds error in this line of the ALJ's
20 reasoning.

21 3. *Daily Activities*

22 Plaintiff argues that the ALJ erred in citing her activities as a reason to discount her
23 allegations because the ALJ failed to identify activities that either contradict her testimony or

1 demonstrate the existence of transferable work skills. (Dkt. # 10 at 17.) The Court agrees.

2 The ALJ noted that Plaintiff's physical pain (more than her mental condition) limits her
3 ability to prepare meals, complete chores, and drive (AR at 54), but the ALJ also noted that
4 Plaintiff alleged that her physical pain limits her activities (*id.* at 51-52), and therefore the ALJ
5 failed to identify any contradiction. The ALJ also noted that Plaintiff was able to attend
6 Christmas dinner and church in 2015, which demonstrates she can "perform[] some tasks out of
7 her normal routine[,]” and that she traveled to Germany for two weeks in 2018. *Id.* at 54. It is not
8 clear that any of these activities would be inconsistent with the physical or mental limitations
9 that Plaintiff alleged, and the ALJ did not explain her reasoning here.

10 Lastly, the ALJ stated that Plaintiff completed her associate's degree during the
11 adjudicated period, acknowledging that Plaintiff required accommodations to do so. AR at 54.
12 Plaintiff's need for accommodations is consistent with her physical allegations. Plaintiff
13 explained at the hearing that she was able to cope with the mental challenges of college with
14 medication, but that she had to stop taking that medication due to side effects. *See id.* at 377-79.
15 The ALJ failed to address all of Plaintiff's allegations related to her college coursework and
16 erred in suggesting that this activity was inconsistent with her allegations. Because the ALJ
17 failed to identify activities that either contradict Plaintiff's allegations or demonstrate
18 transferable work skills, the ALJ erred in relying on Plaintiff's activities as a reason to discount
19 her allegations. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (activities may undermine
20 credibility where they (1) contradict the claimant's testimony or (2) "meet the threshold for
21 transferable work skills").

22 For all of these reasons, the ALJ's assessment of Plaintiff's testimony is erroneous and
23 the Court finds that the proper remedy for this error is a remand for further proceedings.

Although Plaintiff requests, in the alternative, a remand for a finding of disability (dkt. # 10 at 18), she has not shown that this extraordinary remedy would be appropriate here. *See Leon v. Berryhill*, 880 F.3d 1044, 1045 (9th Cir. 2017) (“An automatic award of benefits in a disability benefits case is a rare and prophylactic exception to the well-established ordinary remand rule.”). A finding of disability requires the Court to find that there are no conflicts in the record requiring resolution, and such a finding would be inconsistent with, for example, the conflicts in the medical evidence described in the following section, *infra*. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (explaining that a court must determine whether the record contains outstanding conflicts that must be resolved before crediting a claimant’s testimony and entering a finding of disability).

Furthermore, Plaintiff herself contends that the ALJ’s RFC assessment does not account for all of her alleged limitations, as discussed *infra*. (Dkt. # 10 at 12-15.) Such an argument suggests that further proceedings would serve the useful purpose of allowing the ALJ to craft a complete RFC assessment. Therefore, the Court finds that a remand for further proceedings is the appropriate remedy under the circumstances of this case.

B. The ALJ Erred in Assessing Some of the Medical Opinion Evidence

Plaintiff challenges the ALJ’s assessment of several medical opinions, each of which the Court will address in turn.

*1. Legal Standards*¹

Where not contradicted by another doctor, a treating or examining doctor’s opinion may be rejected only for “‘clear and convincing’” reasons. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Where contradicted, a

¹ Because Plaintiff applied for benefits before March 27, 2017, the regulations set forth in 20 C.F.R. § 404.1527 and § 416.927 apply to the ALJ’s consideration of medical opinions.

1 treating or examining doctor's opinion may not be rejected without "specific and legitimate
2 reasons' supported by substantial evidence in the record for so doing." *Id.* at 830-31 (quoting
3 *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

4 2. *Jared Reaves, M.D.*

5 Dr. Reaves, a non-examining² medical expert ("ME"), responded to an interrogatory in
6 January 2019, opining that Plaintiff equaled Listing 1.04A. AR at 3185-91. The ALJ gave little
7 weight to this opinion, finding it unsupported by the record and inconsistent with Plaintiff's
8 treatment notes and the testimony of another ME, John Kwok, M.D., at a subsequent hearing. *Id.*
9 at 58-59.

10 Plaintiff suggests that the ALJ erred in finding Dr. Reaves' opinion that Plaintiff equals
11 Listing 1.04A to be unsupported by the record because the Appeals Council previously found
12 this reasoning erroneous. (Dkt. # 10 at 7.) Plaintiff's argument is misleading. The Appeals
13 Council did not state that the previous ALJ erred in finding Dr. Reaves' opinion regarding
14 Listing 1.04A to be unsupported by the record; the Appeals Council stated that the previous ALJ
15 erred in discounting Dr. Reaves' statement because he failed to cite adequate findings to support
16 his conclusion that Plaintiff satisfied that listing. *See* AR at 490, 503. The Appeals Council
17 instructed the ALJ to recontact Dr. Reaves if the basis for his opinion required clarification. *Id.*
18 The Appeals Council did not explicitly address the prior ALJ's finding that Dr. Reaves' Listing
19 1.04A opinion was inconsistent with the clinical record. *Id.* Thus, the ALJ did not err in
20 elaborating upon this line of reasoning and Plaintiff has not shown that the ALJ erred in citing
21 objective evidence that fails to support Dr. Reaves' opinion that Plaintiff equals Listing 1.04A.

22
23 ² The Commissioner suggests that Dr. Reaves examined Plaintiff (dkt. # 11 at 10), and that the ALJ found
his examination to be inconsistent with his conclusions (*id.*), but Dr. Reaves did not examine Plaintiff nor
did the ALJ indicate that he did. *See* AR at 3185 (Dr. Reaves' statement that he has never examined
Plaintiff).

1 Plaintiff's citations to records documenting her pain (dkt. # 10 at 5-7) do not undermine the
2 ALJ's finding that the record fails to indicate that Plaintiff meets or equals all of the
3 requirements of Listing 1.04A.

4 The ALJ also found inconsistency between Dr. Reaves' opinion that Plaintiff equals
5 Listing 1.04A and his checkbox RFC assessment (AR at 59), and this finding is supported by
6 substantial evidence. Listing 1.04A required a showing that *inter alia* Plaintiff cannot ambulate
7 effectively, yet Dr. Reaves' checkbox RFC assessment indicates that *inter alia* Plaintiff could
8 walk for 45 minutes during a workday and does not require an assistive device in order to
9 ambulate. *See id.* at 47 (ALJ's discussion of the Listing 1.04A requirements), 3188 (Dr. Reaves'
10 description of Plaintiff's ability to walk). This inconsistency is a valid reason to discount Dr.
11 Reaves' opinions. *See Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 603 (9th Cir.
12 1999) (ALJ appropriately considers internal inconsistencies within and between physicians'
13 reports).

14 Lastly, Plaintiff suggests that the ALJ erred in obtaining additional ME testimony from
15 Dr. Kwok at the 2021 hearing and that this constitutes "doctor-shopping," contrary to the
16 Appeals Council's remand instructions to recontact Dr. Reaves if his opinion required
17 clarification. (Dkt. # 10 at 7-8.) Again, Plaintiff fails to account for the entirety of the Appeals
18 Council's instructions. The Appeals Council contemplated that additional ME testimony could
19 be necessary and afforded the ALJ latitude to determine how to best develop the record on
20 remand. *See* AR at 505 ("If warranted by the expanded record, obtain clarification from Dr.
21 Reaves, if available, or if necessary, evidence from another [ME] related to the nature and
22 severity of and functional limitations resulting from the claimant's impairments[.]"). Plaintiff has
23

1 not shown that the ALJ failed to fully comply with the Appeals Council's instructions in this
2 regard.

3 Because the ALJ reasonably found Dr. Reaves' opinion to be inconsistent with the record
4 and internally inconsistent, the ALJ did not err in discounting this evidence. *See Sousa v.*
5 *Callahan*, 143 F.3d 1240, 1244 (9th Cir. 1998) ("The Commissioner may reject the opinion of a
6 non-examining physician by reference to specific evidence in the medical record.").

7 3. *Margo Newell-Eggert, M.D.*

8 The ALJ also discounted the 2016 opinions of Plaintiff's treating physician, Dr.
9 Newell-Eggert, releasing Plaintiff to work with certain limits, specifically a restriction to
10 lifting/carrying less than 10 pounds, a limitation to standing/walking for no longer than 15
11 minutes at a time, and the ability to alternate between sitting and standing as needed. *See AR at*
12 *1328, 2368.* The ALJ noted that these opinions focus on Plaintiff's restrictions at a particular
13 point in time, but found them to be unsupported by the longitudinal record and inconsistent with
14 the limitations described by Dr. Kwok. *Id.* at 56. The ALJ also found that Plaintiff's activities
15 were inconsistent with the limitations described by Dr. Newell-Eggert. *Id.*

16 Plaintiff disputes the ALJ's finding that the opinions of Dr. Newell-Eggert are
17 unsupported by the record. The Court agrees that the ALJ erred in stating that Dr.
18 Newell-Eggert's opinions are not supported by her own treatment notes, and erred in suggesting
19 that Dr. Newell-Eggert herself opined that Plaintiff was less limited, because neither of these
20 findings is supported by substantial evidence. *See AR at 56.* To the extent that the ALJ cited
21 normal objective findings or imaging results as inconsistent with Dr. Newell-Eggert's opinions,
22 this reasoning is not legitimate because Dr. Newell-Eggert explicitly referenced Plaintiff's pain
23 as a basis for her limitations. *See id.* at 1328, 2367. The ALJ did not cite evidence that is

1 necessarily inconsistent with Plaintiff's reports of pain, and, accordingly, erred in suggesting that
2 Dr. Newell-Eggert's opinions were inconsistent with the record.

3 The ALJ also erred in discounting Dr. Newell-Eggert's opinions based on Plaintiff's
4 activities because none of the activities cited contradict the limitations Dr. Newell-Eggert
5 described. The record does not describe Plaintiff's activities in a manner inconsistent with the
6 restrictions Dr. Newell-Eggert described, and the ALJ's own description of those activities
7 acknowledges that Plaintiff's activities were limited by pain. *See* AR at 56.

8 For these reasons, the Court finds that the ALJ failed to provide legally sufficient reasons
9 to discount Dr. Newell-Eggert's opinions.

10 4. *Kimberly Wheeler, Ph.D. & Terilee Wingate, Ph.D.*

11 The record contains three DSHS form opinions, two written by Dr. Wheeler in 2016 and
12 2018, and one written by Dr. Wingate in 2020. AR at 1117-21, 3144-48, 3545-49. The ALJ gave
13 limited weight to Dr. Wheeler's opinions that Plaintiff had marked mental limitations, finding
14 those marked limitations inconsistent with Plaintiff's treatment records indicating that Plaintiff's
15 mental limitations were no more than moderate. *Id.* at 57. The ALJ discounted the marked
16 limitations listed by Dr. Wingate as based on Plaintiff's self-report and inconsistent with the
17 treatment record, and noted that Dr. Wingate's examination was performed telephonically. *Id.* at
18 57-58.

19 Plaintiff disputes the ALJ's finding that these opinions are inconsistent with the treatment
20 record, citing many treatment notes that document Plaintiff's report of symptoms. (Dkt. # 10 at
21 10-11.) Plaintiff has not, however, pointed to any treatment notes that directly corroborate the
22 marked limitations in workplace adaptation, communication, or persistence that Dr. Wheeler
23 described, or the marked limitations in workplace attendance, behavior, and persistence that Dr.

1 Wingate listed. (*Id.*) Plaintiff has therefore not established error in the ALJ's finding that these
2 opinions are inconsistent with the treatment record, and this valid reasoning renders harmless any
3 error in the ALJ's suggestion that a telephonic examination undermines the value of an opinion.

4 5. *Chris Juergens, DC*

5 Dr. Juergens, Plaintiff's chiropractor, opined in October 2015 that Plaintiff could work
6 only four hours per day. AR at 1127. The ALJ gave little weight to Dr. Juergens' opinion, noting
7 that a chiropractor is not an acceptable medical source under the applicable regulations, and that
8 this opinion fails to assess Plaintiff's functional abilities. *Id.* at 58. The ALJ also notes that
9 whether a claimant can work is an issue reserved to the Commissioner. *Id.*

10 Plaintiff contends that Dr. Juergens' status as a non-acceptable medical source is not an
11 independent reason to discount the opinion. (Dkt. # 10 at 12.) She correctly states that an ALJ
12 must provide a germane reason to discount an opinion written by a non-acceptable medical
13 source. *See Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). The ALJ's reasoning was
14 germane, however, because the ALJ reasonably found that an opinion describing Plaintiff as
15 capable of working four hours per day does not address her functional abilities. Because Dr.
16 Juergens' note does not describe any particular functional limitations, the ALJ did not err in
17 finding it less probative to the ALJ's RFC assessment, or in discounting it on that basis.

18 **C. The ALJ May Reconsider Plaintiff's RFC on Remand**

19 Plaintiff argues that the ALJ erred in failing to credit her testimony regarding her
20 handling and fingering limitations, because the ALJ's RFC assessment does not fully account for
21 her carpal tunnel syndrome pain. (Dkt. # 10 at 12-3.) Because, as found *supra*, the ALJ must
22 reconsider Plaintiff's allegations on remand, the ALJ will have another opportunity to consider
23

1 Plaintiff's testimony on this issue. The ALJ will likewise also have the opportunity to reconsider
2 Plaintiff's testimony regarding her leg swelling and her need to elevate her legs. (*Id.* at 15.)

3 Plaintiff also argues that the ALJ erred in relying on the improvement she experienced in
4 her migraine headaches in October 2020 without acknowledging that her headaches caused
5 limitations prior to that improvement. (Dkt. # 10 at 13-14 (citing *Smith v. Kijakazi*, 14 F.4th
6 1108, 1112 (9th Cir. 2021).) The Court agrees that the ALJ's step-two findings do not explain
7 why Plaintiff's headaches did not constitute a severe impairment, at least before October 2020.
8 *See* AR at 45. Any error is harmless, however, because the ALJ stated that the RFC assessment
9 accommodates Plaintiff's headaches by including environmental restrictions (*see id.*), and
10 Plaintiff has not pointed to evidence establishing the existence of greater restrictions. (Dkt. # 10
11 at 14-15.) But because Plaintiff will have the opportunity to present additional evidence on
12 remand, the ALJ may reconsider any evidence of limitations caused by Plaintiff's headaches at
13 that time.

14 V. CONCLUSION

15 For the foregoing reasons, the Commissioner's final decision is REVERSED, and this
16 case is REMANDED for further administrative proceedings under sentence four of 42 U.S.C.
17 § 405(g). On remand, the ALJ should reconsider Plaintiff's testimony and the opinions of Dr.
18 Newell-Eggert, and, if necessary, reevaluate Plaintiff's headaches and RFC, and any other parts
19 of the decision.

20 Dated this 23rd day of September, 2022.

21 

22 MICHELLE L. PETERSON
23 United States Magistrate Judge